WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.3.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Appeal No.60 of 1999

G.Ramaswamy .. Appellant/Petitioner

Vs.

1. The Taluk Excise Officer
   Trichy Taluk, Trichy.

2. The District collector
   Tiruchirapalli.

3. The State of Tamil Nadu
   rep. By its Secretary
   Prohibition and Excise
   Department, Fort St.George
   Chennai - 600 009. .. Respondents/Respondents

Appeal under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 14.7.1998 made in W.P.No.14148 of 1989 to call for records of the Respondents in proceedings ந.க.பி 772/83 dated 10.08.1989 on the file of the 2nd respondent to quash the same as illegal arbitrary and against the principles of Natural Justice and to direct the respondents to refund a sum of Rs.1,24,950/- owing to the petitioner by way of kist amount.

For Appellant : Mr.C.P.Sivamohan
For Respondents : Mr.G.Sankaran
Additional Government Pleader

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The issue that arises for our consideration in this appeal preferred against the order of the learned Single Judge dated 14.7.1998 in W.P.No.14148 of 1989 dismissing the writ petition is whether the doctrine

https://hcservices.ecourts.gov.in/hcservices/

of fairness or reasonableness can amend, alter or modify the terms of the statutory contract?

2.1. Factual background in a nutshell is that, the appellant was the successful bidder in respect of an arrack Shop No.23, Vennish Nagar, Trichy on a monthly kist of Rs.53,550/- for the excise year 1983-84 and the excise period was between 1.6.1983 and 30.5.1984. The appellant paid three months deposit amounting to Rs.1,60,650/- as contemplated under Rule 15 of the Tamil Nadu Toddy and Arrack Shops (Disposal in Auction) Rules, 1981 (for brevity, "the Rules"). Thereafter, when the appellant proposed to locate the shop in an objectionable site, the same was refused by the respondents in their proceedings dated 8.8.1983, and as the appellant could not select an unobjectionable site, there was a delay in granting licence and finally the appellant was granted licence to run the above arrack shop by proceedings of the first respondent dated 16.1.1984.

2.2. Pursuant to the said grant of licence, viz., on 16.1.1984, the appellant had run the said arrack shop for a period of twenty days, viz., up to 6.2.1984. But, a third party filed a suit in O.S.No.110 of 1984 on the file of the First Additional District Munsif, Tiruchirapalli against the appellant challenging the location of the shop and the Trial Court granted an order of injunction dated 6.2.1984 in I.A.No.144 of 1984 in O.S.No.110 of 1984, restraining the appellant from running the arrack shop in the licensed place, and the said injunction granted, in spite of contest by the appellant, continued for the entire excise year.

2.3. Under such circumstances, the appellant claimed the refund of the amount deposited by him, viz., Rs.1,60,650/-, less the amount liable to be paid by him towards kist for the period of 20 days, viz., Rs.35,700/-. The appellant, in all, claimed for refund of Rs.1,24,950/-.

2.4. The respondents, however, issued a final notice in Na.Ka.P1/772/83, dated 10.8.1989 demanding a sum of Rs.3,20,436/- towards the notional loss incurred by the Government due to the non-payment of kist amount by the appellant during the excise year and also proposed to initiate attachment proceedings, in case of failure to remit the amount demanded within seven days therefrom.

2.5. Being aggrieved, the appellant preferred W.P.No.14148 of 1989 for issue of a writ of Certiorarified Mandamus to call for the records of the respondents in Na.Ka.P1/772/83, dated 10.8.1989 and to direct the respondents to refund the sum of Rs.1,24,950/- owing to him.

2.6. The learned Single Judge, by order dated 14.7.1998 made in W.P.No.14148 of 1989, taking note of the facts that even though as early as by proceedings Rc.P2/772/83, dated 8.8.1983 the respondents have informed the appellant that the site selected by him could not be licenced and thereby asked him to locate an unobjectionable site, the appellant had chosen to take the risk of locating the shop in an objectionable place and

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

therefore, got himself trapped in a civil litigation, upheld the impugned demand and dismissed the writ petition. Hence, this writ appeal.

3.1. The learned counsel for the appellant contends that the appellant had run the shop only for twenty days and therefore, he is entitled for the refund of the deposit amount based on legitimate expectation.

3.2. The learned counsel for the appellant further contends that the learned Single Judge failed to appreciate that the demand for notional loss and refusal to refund the deposit made by the appellant is arbitrary, unreasonable and amounts to unjustified enrichment and the same is opposed to equity, justice and good conscience.

4. Per contra, the learned Additional Government Pleader justifying the impugned proceedings contends that the appellant is not entitled to the relief sought for and on the other hand, the appellant is liable to pay notional loss as per the terms and conditions agreed between the appellant and the respondents.

5. We have given careful consideration to the submissions of both sides.

6. The power to demand the notional loss sustained by the Government due to the non-running of the arrack shop by the licensee is traceable to Rule 21 of the Rules. The appellant having applied for the license and participated in the auction as per the Rules, is not entitled to oppose the recovery of loss sustained by the Government as a result of the default committed by him, as the rights and obligations between the appellant and the State are governed under the statutory rules.

7. Concededly, the licence granted to the appellant was never cancelled and therefore, the question of bringing the shop for resale does not arise and the appellant remained a licensee throughout the excise period. If that be so, we are unable to appreciate the argument advanced on behalf of the appellant that the demand of notional loss is arbitrary, unreasonable, amounts to unjustified enrichment, and opposed to equity, justice and good conscience, as none of the theories are attracted in the instant case, where the appellant had agreed to the statutory rules and the terms and conditions of the contract.

8. That apart, it is a settled law that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim “dura lex sed lex”, which means “the law is hard, but it is the law”. Equity can only supplement the law, but it cannot supplant or override it, vide Raghunath Rai Bareja v. Punjab National Bank,(2007) 2 SCC 230. In the said decision, the Apex Court, referred to and reiterated the well settled principles in the earlier decisions cited hereunder:

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

"What is administered in courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law, vide Madamanchi Ramappa v. Muthaluru Bojjappa, AIR 1963 SC 1633

Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law, vide Council for Indian School Certificate Examination v. Isha Mittal, 2000 (7) SCC 521.

Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law, vide P.M. Latha v. State of Kerala, 2003 (3) SCC 541.

It is now well settled that when there is a conflict between law and equity the former shall prevail, vide Laxminarayan R. Bhattad v. State of Maharashtra, 2003 (5) SCC 413

In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom, vide Nasiruddin v. Sita Ram Agarwal, 2003 (2) SCC 577

Equitable considerations have no place where the statute contained express provisions, vide E. Palanisamy v. Palanisamy, 2003 (1) SCC 123.

The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations, vide India House v. Kishan N. Lalwani, 2003 (9) SCC 393."

9. The claim of legitimate expectation advanced on behalf of the appellant also, in our considered opinion, is not sustainable in law as the rights and duties of the parties are fully governed by the terms of the contract, which are statutory in nature.

10. Moreover, it is a trite law that legitimate expectation is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by the courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made,

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

or practice established. In short, a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the "legitimate expectation", vide Ram Pravesh Singh v. State of Bihar,(2006) 8 SCC 381 .

11. In the case on hand, when the contract between the parties is governed by the Tamil Nadu Toddy and Arrack Shops (Disposal in Auction) Rules and the terms and conditions of the licence, the same are binding both the parties. Neither of them can depart from such Rules and terms of the contract. In a contract with the State there is no legitimate expectation to alter the express terms of the statutory contract or to contend that the licensee is legitimately expected to pay kist as per the Rules only if they run the shop. The duty to act fairly cannot be sought to be imported into a contract, much less a statutory contract to modify, alter or vary its terms and to create an obligation upon the State to dispense with its rights under the Rules to demand the notional loss sustained by the State by the failure on the part of the appellant to act upon the licence which is granted to run the impugned arrack shop.

12. The doctrine of fairness or duty to act fairly and reasonably is, of course, a doctrine developed in the administrative law to ensure the Rule of Law and to prevent the failure of justice, where the action is administrative in nature. Just as principles of natural justice ensure fair decision where function is quasi-judicial, the doctrine of fairness is evolved to ensure fair action where the function is administrative in character. But, at the same time, the said doctrine of fairness and the duty to act fairly and reasonably cannot certainly be invoked to amend, alter or vary the express terms of the contract between the parties. This is so even if the contract is governed by the statutory provision, viz., where it is a statutory contract. Because, in such cases, the mutual rights and liabilities of the parties, whether licensee or the State are governed by Rules and the terms of the agreement entered into thereunder, which also have the statutory force and the parties, who approach for grant of licence, are therefore, quite aware of the conditions that are sought to be complied with for grant of licence as contemplated under the Rules, even before they apply for such licence. Having thus being cognizant of the conditions sought to be complied with and applied for the licence, knowing such statutory provisions, as a prudent business person, the appellant ought to have taken a decision even at the time of applying for such licence and participating in the auction. The inability to locate the shop in an unobjectionable place or any opposition for locating the shop by the third parties, cannot be a ground for the appellant either to

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

claim refund of the deposit amount, which he is not entitled to in view of Rule 21 of the Rules, or to oppose the legitimate demand made by the respondents towards the notional loss.

13. For the reasons aforesaid, we have no hesitation to hold that the demand of notional loss is neither arbitrary nor unreasonable, nor the same amounts to unjustified enrichment, nor opposed to equity, justice and good conscience, nor contrary to the doctrine of fairness, inasmuch as those doctrines are alien to the terms of the contract, much less the impugned statutory contract.

Finding no merits, this writ appeal is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sasi

To:

1. The Taluk Excise Officer
   Trichy Taluk, Trichy.

2. The District collector
   Tiruchirapalli.

3. The Secretary
   Prohibition and Excise
   Department, State of Tamil Nadu
   Fort St.George, Chennai - 600 009.

1 cc To Mr.C.P.Sivamohan, Advocate, SR.19627.
1 cc To The Government Pleader, SR.20594.

Writ Appeal No.60 of 1999

PPV(CO)
RVL 15.05.2007

https://hcservices.ecourts.gov.in/hcservices/